



General Assembly

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Amendment

LCO No. 8183

SB0000308183SD0

Offered by:
SEN. PRAGUE, 19th Dist.

To: Subst. Senate Bill No. 3

File No. 723

Cal. No. 440

**"AN ACT CONCERNING A CRIMINAL HISTORY AND PATIENT
ABUSE BACKGROUND SEARCH PROGRAM."**

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. (NEW) (*Effective January 1, 2012*) (a) As used in this
4 section:

5 (1) "Criminal history and patient abuse background search" or
6 "background search" means (A) a review of the registry of nurse's
7 aides maintained by the Department of Public Health pursuant to
8 section 20-102bb of the general statutes, (B) checks of state and national
9 criminal history records conducted in accordance with section 29-17a
10 of the general statutes, and (C) a review of any other registry specified
11 by the Department of Public Health which the department deems
12 necessary for the administration of a background search program.

13 (2) "Direct access" means physical access to a patient or resident of a
14 long-term care facility that affords an individual with the opportunity

15 to commit abuse or neglect against or misappropriate the property of a
16 patient or resident.

17 (3) "Disqualifying offense" means a conviction of any crime
18 described in 42 USC 1320a-7(a)(1), (2), (3) or (4) or a substantiated
19 finding of neglect, abuse or misappropriation of property by a state or
20 federal agency pursuant to an investigation conducted in accordance
21 with 42 USC 1395i-3(g)(1)(C) or 42 USC 1396r(g)(1)(C).

22 (4) "Long-term care facility" means any facility, agency or provider
23 that is a nursing home, as defined in section 19a-521 of the general
24 statutes, a home health agency, as defined in section 19a-490 of the
25 general statutes, an assisted living services agency, as defined in
26 section 19a-490 of the general statutes, an intermediate care facility for
27 the mentally retarded, as defined in 42 USC 1396d(d), a chronic disease
28 hospital, as defined in section 19a-550 of the general statutes, or an
29 agency providing hospice care which is licensed to provide such care
30 by the Department of Public Health or certified to provide such care
31 pursuant to 42 USC 1395x.

32 (b) (1) On or before July 1, 2012, the Department of Public Health
33 shall create and implement a criminal history and patient abuse
34 background search program, within available appropriations, in order
35 to facilitate the performance, processing and analysis of the criminal
36 history and patient abuse background search of individuals who have
37 direct access.

38 (2) The Department of Public Health shall develop a plan to
39 implement the criminal history and patient abuse background search
40 program, in accordance with this section. In developing such plan, the
41 department shall (A) consult with the Commissioners of Emergency
42 Services and Public Protection, Developmental Services, Mental Health
43 and Addiction Services, Social Services and Consumer Protection, or
44 their designees, the State Long-Term Care Ombudsman, or a designee,
45 the chairperson for the Board of Pardons and Paroles, or a designee, a
46 representative of each category of long-term care facility and

47 representatives from any other agency or organization the
48 Commissioner of Public Health deems appropriate, (B) evaluate factors
49 including, but not limited to, the administrative and fiscal impact of
50 components of the program on state agencies and long-term care
51 facilities, background check procedures currently used by long-term
52 care facilities, federal requirements pursuant to Section 6201 of the
53 Patient Protection and Affordable Care Act, P.L. 111-148, as amended
54 from time to time, and the effect of full and provisional pardons on
55 employment, and (C) outline (i) an integrated process with the
56 Department of Public Safety to cross-check and periodically update
57 criminal information collected in criminal databases, (ii) a process by
58 which individuals with disqualifying offenses can apply for a waiver,
59 and (iii) the structure of an Internet-based portal to streamline the
60 criminal history and patient abuse background search program. The
61 Department of Public Health shall submit such plan, including a
62 recommendation as to whether homemaker-companion agencies
63 should be included in the scope of the background search program, to
64 the joint standing committees of the General Assembly having
65 cognizance of matters relating to aging, appropriations and the
66 budgets of state agencies, and public health, in accordance with the
67 provisions of section 11-4a of the general statutes, not later than
68 February 1, 2012.

69 (c) (1) Except as provided in subdivision (2) of this subsection, each
70 long-term care facility, prior to extending an offer of employment to or
71 entering into a contract for the provision of long-term care services
72 with any individual who will have direct access, or prior to allowing
73 any individual to have direct access while volunteering at such long-
74 term care facility, shall require that such individual submit to a
75 background search. The Department of Public Health shall prescribe
76 the manner by which (A) long-term care facilities perform the review
77 of (i) the registry of nurse's aides maintained by the department
78 pursuant to section 20-102bb of the general statutes, and (ii) any other
79 registry specified by the department, including requiring long-term
80 care facilities to report the results of such review to the department,

81 and (B) individuals submit to state and national criminal history
82 records checks, including requiring the Department of Public Safety to
83 report the results of such checks to the Department of Public Health.

84 (2) No long-term care facility shall be required to comply with the
85 provisions of this subsection if the individual provides evidence to the
86 long-term care facility that such individual submitted to a background
87 search conducted pursuant to subdivision (1) of this subsection not
88 more than three years immediately preceding the date such individual
89 applies for employment, seeks to enter into a contract or begins
90 volunteering with the long-term care facility and that the prior
91 background search confirmed that the individual did not have a
92 disqualifying offense.

93 (d) (1) The Department of Public Health shall review all reports
94 provided to the department pursuant to subsection (c) of this section. If
95 any such report contains evidence indicating that an individual has a
96 disqualifying offense, the department shall provide notice to the
97 individual and the long-term care facility indicating the disqualifying
98 offense and providing the individual with the opportunity to file a
99 request for a waiver pursuant to subdivisions (2) and (3) of this
100 subsection.

101 (2) An individual may file a written request for a waiver with the
102 department not later than thirty days after the date the department
103 mails notice to the individual pursuant to subdivision (1) of this
104 subsection. The department shall mail a written determination
105 indicating whether the department shall grant a waiver pursuant to
106 subdivision (3) of this subsection not later than fifteen business days
107 after the department receives the written request from the individual,
108 except that said time period shall not apply to any request for a waiver
109 in which an individual challenges the accuracy of the information
110 obtained from the background search.

111 (3) The department may grant a waiver from the provisions of
112 subsection (e) of this section to an individual who identifies mitigating

113 circumstances surrounding the disqualifying offense, including (A)
114 inaccuracy in the information obtained from the background search,
115 (B) lack of a relationship between the disqualifying offense and the
116 position for which the individual has applied, (C) evidence that the
117 individual has pursued or achieved rehabilitation with regard to the
118 disqualifying offense, or (D) that substantial time has elapsed since
119 committing the disqualifying offense. The department and its
120 employees shall be immune from liability, civil or criminal, that might
121 otherwise be incurred or imposed, for good faith conduct in granting
122 waivers pursuant to this subdivision.

123 (4) After completing a review pursuant to subdivision (1) of this
124 subsection, the department shall notify in writing the long-term care
125 facility to which the individual has applied for employment or with
126 which the individual seeks to enter into a contract or volunteer (A) of
127 any disqualifying offense and any information the individual provided
128 to the department regarding mitigating circumstances surrounding
129 such offense, or of the lack of a disqualifying offense, and (B) whether
130 the department granted a waiver pursuant to subdivision (3) of this
131 subsection.

132 (e) Notwithstanding the provisions of section 46a-80 of the general
133 statutes, no long-term care facility shall employ an individual required
134 to submit to a background search, contract with any such individual to
135 provide long-term care services or allow such individual to volunteer
136 if the long-term care facility receives notice from the department that
137 the individual has a disqualifying offense in the individual's
138 background search and the department has not granted a waiver
139 pursuant to subdivision (3) of subsection (d) of this section. A long-
140 term care facility may, but is not obligated to, employ, enter into a
141 contract with or allow to volunteer an individual who was granted a
142 waiver pursuant to said subdivision (3).

143 (f) (1) Except as provided in subdivision (2) of this subsection, a
144 long-term care facility shall not employ, enter into a contract with or
145 allow to volunteer any individual required to submit to a background

146 search until the long-term care facility receives notice from the
147 Department of Public Health pursuant to subdivision (4) of subsection
148 (d) of this section.

149 (2) A long-term care facility may employ, enter into a contract with
150 or allow to volunteer an individual required to submit to a background
151 search on a conditional basis before the long-term care facility receives
152 notice from the department that such individual does not have a
153 disqualifying offense, provided: (A) The employment or contractual or
154 volunteer period on a conditional basis shall last not more than sixty
155 days, (B) the long-term care facility has begun the review required
156 under subsection (c) of this section and the individual has submitted to
157 checks pursuant to subsection (c) of this section, (C) the individual is
158 subject to direct, on-site supervision during the course of such
159 conditional employment or contractual or volunteer period, and
160 (D) the individual, in a signed statement (i) affirms that the individual
161 has not committed a disqualifying offense, and (ii) acknowledges that
162 a disqualifying offense reported in the background search required by
163 subsection (c) of this section shall constitute good cause for termination
164 and a long-term care facility may terminate the individual if a
165 disqualifying offense is reported in said background search.

166 (g) Notwithstanding the provisions of subsection (b) of this section,
167 the department may phase in implementation of the criminal history
168 and patient abuse background search program by category of long-
169 term care facility. No long-term care facility shall be required to
170 comply with the provisions of subsections (c), (e) and (f) of this section
171 until the date notice is published by the Commissioner of Public
172 Health in the Connecticut Law Journal indicating that the
173 commissioner is implementing the criminal history and patient abuse
174 background search program for the category of such long-term care
175 facility.

176 (h) The department shall adopt regulations, in accordance with the
177 provisions of chapter 54 of the general statutes, to implement the
178 provisions of this section. The department may implement policies and

179 procedures consistent with the provisions of this section while in the
180 process of adopting such policies and procedures as regulation,
181 provided notice of intention to adopt regulations is printed in the
182 Connecticut Law Journal not later than twenty days after the date of
183 implementation. Such policies and procedures shall be valid until the
184 time final regulations are effective.

185 Sec. 2. Section 20-670 of the general statutes is repealed and the
186 following is substituted in lieu thereof (*Effective January 1, 2012*):

187 As used in sections 20-670 to 20-680, inclusive, as amended by this
188 act:

189 (1) "Certificate" means a certificate of registration issued under
190 section 20-672.

191 (2) "Commissioner" means the Commissioner of Consumer
192 Protection or any person designated by the commissioner to
193 administer and enforce the provisions of sections 20-670 to 20-680,
194 inclusive, as amended by this act.

195 (3) "Companion services" means nonmedical, basic supervision
196 services to ensure the well-being and safety of a person in such
197 person's home.

198 (4) "Employee" means any person employed by, or who enters into a
199 contract to perform services for, a homemaker-companion agency,
200 including, but not limited to, temporary employees, pool employees
201 and persons treated by such agency as independent contractors.

202 (5) "Comprehensive background check" means a background
203 investigation of a prospective employee performed by a homemaker-
204 companion agency, that includes: (A) A review of any application
205 materials prepared or requested by the agency and completed by the
206 prospective employee; (B) an in-person interview of the prospective
207 employee; (C) verification of the prospective employee's Social
208 Security number; (D) if the position applied for within the agency

209 requires licensure on the part of the prospective employee, verification
210 that the required license is in good standing; (E) a check of the registry
211 established and maintained pursuant to section 54-257; (F) a review of
212 criminal conviction information obtained through a search of current
213 criminal matters of public record in this state based on the prospective
214 employee's name and date of birth; (G) if the prospective employee has
215 resided in this state less than three years prior to the date of the
216 application with the agency, a review of criminal conviction
217 information from the state or states where such prospective employee
218 resided during such three-year period; and (H) a review of any other
219 information that the agency deems necessary in order to evaluate the
220 suitability of the prospective employee for the position.

221 [(5)] (6) "Homemaker services" means nonmedical, supportive
222 services that ensure a safe and healthy environment for a person in
223 such person's home, such services to include assistance with personal
224 hygiene, cooking, household cleaning, laundry and other household
225 chores.

226 [(6)] (7) "Homemaker-companion agency" means (A) any public or
227 private organization [, employing] that employs one or more persons
228 [that] and is engaged in the business of providing companion services
229 or homemaker services, or (B) any registry. Homemaker-companion
230 agency shall not include a home health care agency, as defined in
231 subsection (d) of section 19a-490, or a homemaker-home health aide
232 agency, as defined in subsection (e) of section 19a-490.

233 (8) "Registry" means any person or entity engaged in the business of
234 supplying or referring an individual to or placing an individual with a
235 consumer to provide homemaker or companion services provided by
236 such individual, when the individual providing such services is either
237 (A) directly compensated, in whole or in part, by the consumer, or (B)
238 treated, referred to or considered by such person or entity as an
239 independent contractor.

240 [(7)] (9) "Service plan" means a written document provided by a

241 homemaker-companion agency to a person utilizing services provided
242 by such agency, that specifies the anticipated scope, type, frequency
243 and duration of homemaker or companion services that are to be
244 provided by such agency for the benefit of the person.

245 Sec. 3. Subsection (a) of section 20-672 of the general statutes is
246 repealed and the following is substituted in lieu thereof (*Effective*
247 *January 1, 2012*):

248 (a) Any person seeking a certificate of registration as a homemaker-
249 companion agency shall apply to the Commissioner of Consumer
250 Protection, in writing, on a form provided by the commissioner. The
251 application shall include the applicant's name, residence address,
252 business address, business telephone number and such other
253 information as the commissioner may require. An applicant shall also
254 be required to submit to state and national criminal history records
255 checks in accordance with section 29-17a and to certify under oath to
256 the commissioner that: (1) Such agency complies with the
257 requirements of section 20-678, as amended by this act, concerning
258 employee comprehensive background checks, (2) such agency
259 provides all persons receiving homemaker or companion services with
260 a written individualized contract or service plan that specifically
261 identifies the anticipated scope, type, frequency and duration of
262 homemaker or companion services provided by the agency to the
263 person, (3) such agency maintains a surety bond, and (4) all records
264 maintained by such agency shall be open, at all reasonable hours, for
265 inspection, copying or audit by the commissioner.

266 Sec. 4. Subsection (a) of section 20-675 of the general statutes is
267 repealed and the following is substituted in lieu thereof (*Effective*
268 *January 1, 2012*):

269 (a) The Commissioner of Consumer Protection may revoke, suspend
270 or refuse to issue or renew any certificate of registration as a
271 homemaker-companion agency or place an agency on probation or
272 issue a letter of reprimand for: (1) Conduct by the agency, or by an

273 employee of the agency while in the course of employment, of a
274 character likely to mislead, deceive or defraud the public or the
275 commissioner; [or] (2) engaging in any untruthful or misleading
276 advertising; or (3) failing to perform a comprehensive background
277 check of a prospective employee or maintain a copy of materials
278 obtained during a comprehensive background check, as required by
279 section 20-678, as amended by this act.

280 Sec. 5. Section 20-678 of the general statutes is repealed and the
281 following is substituted in lieu thereof (*Effective January 1, 2012*):

282 [Each homemaker-companion agency shall require that any
283 employee of such agency hired on or after October 1, 2006,] On or after
284 January 1, 2012, each homemaker-companion agency, prior to
285 extending an offer of employment or entering into a contract with a
286 prospective employee, shall require such prospective employee to
287 submit to a comprehensive background check. In addition, each
288 homemaker-companion agency shall require that [any employee of
289 such agency hired on or after October 1, 2006,] such prospective
290 employee complete and sign a form which contains questions as to
291 whether the [current or] prospective employee was convicted of a
292 crime involving violence or dishonesty in a state court or federal court
293 in any state; or was subject to any decision imposing disciplinary
294 action by a licensing agency in any state, the District of Columbia, a
295 United States possession or territory or a foreign jurisdiction. Any
296 [employee of a homemaker-companion agency hired on or after
297 October 1, 2006,] prospective employee who makes a false written
298 statement regarding such prior criminal convictions or disciplinary
299 action shall be guilty of a class A misdemeanor. Each homemaker-
300 companion agency shall maintain a paper or electronic copy of any
301 materials obtained during the comprehensive background check and
302 shall make such records available for inspection upon request of the
303 Department of Consumer Protection.

304 Sec. 6. (NEW) (*Effective January 1, 2012*) (a) As used in this section,
305 "comprehensive background check" means a background investigation

306 performed by a home health agency, as defined in subsection (k) of
307 section 19a-490 of the general statutes, of an applicant for employment
308 that includes, but is not limited to: (1) A review of any application
309 materials prepared or requested by the agency and completed by the
310 applicant; (2) an in-person interview of the applicant; (3) verification of
311 the applicant's Social Security number; (4) if the position applied for
312 within the agency requires licensure on the part of the applicant,
313 verification that the required license is in good standing; (5) a check of
314 the registry established and maintained pursuant to section 54-257 of
315 the general statutes; (6) a review of criminal conviction information
316 obtained through a search of current criminal matters of public record
317 in this state based on the applicant's name and date of birth; (7) if the
318 applicant has resided in this state less than three years prior to the date
319 of the application for employment, a review of criminal conviction
320 information from the state or states where such applicant resided
321 during such three-year period; and (8) a review of any other
322 information that the agency deems necessary in order to evaluate the
323 suitability of the applicant for the position.

324 (b) On or after January 1, 2012, each home health agency, prior to
325 extending an offer of employment to an applicant for employment
326 with the agency, shall require such applicant to submit to a
327 comprehensive background check. In addition, each home health
328 agency shall require that any such applicant complete and sign a form
329 disclosing whether the applicant was subject to any decision imposing
330 disciplinary action by a licensing agency in any state, the District of
331 Columbia, a United States possession or territory or a foreign
332 jurisdiction. Any applicant who makes a false statement regarding
333 such prior disciplinary action with intent to mislead the home health
334 agency shall be guilty of a class A misdemeanor.

335 (c) The provisions of this section shall cease to be effective on the
336 date the Commissioner of Public Health publishes notice in the
337 Connecticut Law Journal of the department's implementation of the
338 criminal history and patient abuse background search program for
339 home health agencies in accordance with the provisions of section 1 of

340 this act."

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>January 1, 2012</i>	New section
Sec. 2	<i>January 1, 2012</i>	20-670
Sec. 3	<i>January 1, 2012</i>	20-672(a)
Sec. 4	<i>January 1, 2012</i>	20-675(a)
Sec. 5	<i>January 1, 2012</i>	20-678
Sec. 6	<i>January 1, 2012</i>	New section